

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LANNY C. SIMMONS,)	
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Petitioner,)	
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v.)	Docket No. 29460-15.
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COMMISSIONER OF INTERNAL REVENUE,)	
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Respondent)	
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ORDER OF DISMISSAL FOR LACK OF JURISDICTION

The petition underlying the above-docketed proceeding was filed on November 23, 2015, and alleged disagreement with recent lien and levy activity by the Internal Revenue Service (IRS), referencing the taxable year 2014. Attached to the petition was a Notice CP504, Notice of intent to seize (“levy”) your state tax refund or other property, dated November 16, 2015, sent to petitioner for the 2014 tax year.

Thereafter, on January 25, 2016, respondent filed a Motion To Dismiss for Lack of Jurisdiction, on the ground that no notice of determination pursuant to section 6320 and/or 6330 of the Internal Revenue Code (I.R.C.) had been sent to petitioner with respect to the 2014 taxable year, nor had respondent made any other determination with respect to petitioner’s 2014 tax year would confer jurisdiction on this Court.

This Court is a court of limited jurisdiction. It may therefore exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66 T.C. 61, 66 (1976). In a case seeking the redetermination of a deficiency, the jurisdiction of the Court depends, in part, on the issuance by the Commissioner of a valid notice of deficiency to the taxpayer. Rule 13(c), Tax Court Rules of Practice and Procedure; Frieling v. Commissioner, 81 T.C. 42, 46 (1983). The notice of deficiency has been described as “the taxpayer’s ticket to the Tax Court” because without it, there can be no prepayment judicial review by this Court of the deficiency determined by the Commissioner. Mulvania v. Commissioner, 81 T.C. 65, 67 (1983). Similarly, this Court’s jurisdiction in a case seeking review of a determination under section 6320 or 6330, I.R.C., depends, in part, upon the issuance of a valid notice of determination by the IRS Office of Appeals under section 6320 or 6330, I.R.C. Secs. 6320(c) and 6330(d)(1), I.R.C.; Rule 330(b),

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Tax Court Rules of Practice and Procedure; Offiler v. Commissioner, 114 T.C. 492 (2000). A condition precedent to the issuance of a notice of determination is the requirement that a taxpayer have requested a hearing before the IRS Office of Appeals within the 30-day period specified in section 6320(a) or 6330(a), I.R.C., and calculated with reference to an underlying Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 or Final Notice - Notice of Intent To Levy and Notice of Your Right to a Hearing.

A late or untimely request for a hearing nonetheless made within a one-year period calculated with reference to one of the types of final notice of lien or levy just described will result only in a so-called equivalent hearing and corresponding decision letter, which decision letter is not a notice of determination sufficient to invoke this Court's jurisdiction under section 6320 or 6330, I.R.C. Kennedy v. Commissioner, 116 T.C. 255, 262-263 (2001). A request for a hearing made after said one-year period will be denied, and neither a hearing under section 6320 or 6330, I.R.C., nor an equivalent hearing will be afforded. Secs. 301.6320-1(i)(2), Q&A-I7, I11; 301.6330-1(i)(2), Q&A-I7, I11, Proced. & Admin. Regs.

Where a hearing has been timely requested in response to one of the two types of notices set forth supra, the IRS Office of Appeals is directed to issue a notice of determination entitling the taxpayer to invoke the jurisdiction of this Court. In that context, section 6330(d)(1), I.R.C., specifically provides that the petition must be filed with the Tax Court within 30 days of the determination. The Court has no authority to extend this 30-day period. Weber v. Commissioner, 122 T.C. 258, 263 (2004); McCune v. Commissioner, 115 T.C. 114, 117-118 (2000). However, if the conditions of section 7502, I.R.C., are satisfied, a petition which is timely mailed may be treated as having been timely filed.

Petitioner was served with a copy of respondent's motion to dismiss and on February 18, 2015, filed a notice of objection. The brief document stated in its entirety: "I am writing to object to the IRS' motion to dismiss this case. I would like the opportunity to present my case to the United States Tax Court. Dear United States Tax Court, thank you for your time and assistance on this matter." No reference was made to any further notices that might support an exercise of jurisdiction.

The earlier petition had detailed difficult personal and financial circumstances and the role therein played by IRS activities. It also recounted repeated, and frequently unsuccessful, attempts to communicate with the IRS, noting that the IRS had been unhelpful and had further compounded problems by refusing an offer in compromise. Thus, the record at this juncture suggests that petitioner sought the assistance of the Court after having become frustrated with attempts to work administratively with the IRS but that the petition here was not based upon or instigated by a specific IRS notice expressly providing petitioner with the right to contest a particular IRS determination in this Court. Unfortunately, suffice it to say a parsing of the record reveals that, while it is clear petitioner has been engaged in ongoing efforts and correspondence to deal with the IRS, respondent's jurisdictional allegations stand un rebutted. Critically, no communication reflected in the record of this case constitutes, or can substitute for, a notice of deficiency issued pursuant to section 6212, I.R.C., or a notice of determination issued pursuant to section 6320 and/or 6330, I.R.C. Only a narrow class of specified determinations by the IRS can

open the door to the Tax Court. An IRS Notice CP504, the sole notice offered by petitioner to date, does not fall into that class.

Moreover, specifically as to the Notice CP504, and as suggested by the title, the Court would observe that these are frequently issued pursuant to sections 6330(f) and 6331(d), I.R.C., to inform taxpayers of the IRS's intention to levy upon any State tax refund to which the taxpayer may be entitled. As such and as expressly provided in section 6330(f), I.R.C., the notices confer upon taxpayers no pertinent rights under sections 6320 and/or 6330, I.R.C., that could afford a basis for this Court to take jurisdiction. Finally, to the extent that petitioner at some point sought an offer in compromise, a "stand alone" offer in compromise solely under section 7122, I.R.C., outside the context of a section 6320 and/or 6330, I.R.C., collection case, is one over which no statute confers jurisdiction for review by this Court.

Therefore, while the Court is sympathetic to petitioner's situation and holds great respect for his military service, the Court on the present record lacks jurisdiction in this case to review any action (or inaction) by respondent in regard to 2014. Congress has granted the Tax Court no authority to afford any remedy in the circumstances evidenced by this proceeding, regardless of the merits of petitioner's complaints.

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction is granted, and this case is dismissed for lack of jurisdiction.

(Signed) Michael B. Thornton
Chief Judge

ENTERED: **FEB 26 2016**